

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

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ARTIS X. JOHNSON,

Petitioner,

v.

Case No. 03-CV-71656

SHERRY L. BURT,

Respondent.

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**OPINION AND ORDER DECLINING TO ISSUE A CERTIFICATE OF APPEALABILITY  
AND DENYING MOTION TO PROCEED *IN FORMA PAUPERIS***

Petitioner Artis X. Johnson, a state inmate currently incarcerated at the Carson City Correctional Facility in Carson City, Michigan, filed a *pro se* petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The court issued an Opinion and Order transferring the petition to the Court of Appeals for the Sixth Circuit because it was a successive habeas petition. Petitioner then filed a “Motion for Habeas Corpus Ad Testificandum to Bring Up a Prisoner to Testify,” which the court denied on December 15, 2005. Petitioner has filed a Notice of Appeal challenging the court’s denial of that motion.

In a habeas corpus proceeding, an appeal may not be taken from “the final order in a habeas corpus proceeding” unless a certificate of appealability is issued. 28 U.S.C. § 2253(a). The Sixth Circuit Court of Appeals has not yet decided whether a certificate of appealability is required before a prisoner may appeal a collateral or interlocutory order. *Lordi v. Ishee*, 22 Fed. Appx. 585, 586 (6th Cir. 2001). However, even assuming that a certificate of appealability is required before a petitioner may appeal a collateral

or interlocutory order, Petitioner is not entitled to issuance of a certificate of appealability in this case. The court of appeals may exercise jurisdiction only over final orders, 28 U.S.C. § 1291, or certain collateral or interlocutory orders as described in 28 U.S.C. § 1292. The court's "Order Denying Motion for Habeas Corpus Ad Testificandum to Bring Up a Prisoner to Testify" is not a final order, nor is it encompassed within the collateral or interlocutory orders described in § 1292. Moreover, the court declines to issue a certificate because reasonable jurists would not disagree with the court's conclusion that an evidentiary hearing was not warranted. *See Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (holding that district court should not grant a certificate of appealability unless "[t]he petitioner . . . demonstrate[s] that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong."). Accordingly,

IT IS ORDERED that Petitioner is DENIED a certificate of appealability.

IT IS FURTHER ORDERED that Petitioner's "Motion for Leave to Proceed In Forma Pauperis" [Dkt. # 35] is DENIED. The court finds that the issues raised in Petitioner's appeal are frivolous and that he is not proceeding in good faith. *See* 28 U.S.C. § 1915(a)(3) (stating that an appeal may not be taken *in forma pauperis* "if the trial court certifies in writing that it is not taken in good faith.>").

S/Robert H. Cleland  
ROBERT H. CLELAND  
UNITED STATES DISTRICT JUDGE

Dated: February 15, 2006

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, February 15, 2006, by electronic and/or ordinary mail.

S/Lisa G. Wagner  
Case Manager and Deputy Clerk  
(313) 234-5522